



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8468042

Date: DEC. 22, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented a diploma indicating that he received a Bachelor of Science degree in Business Administration from [REDACTED] College in the Philippines in March 2014. While he provided his school transcript from [REDACTED] College, the Petitioner did not provide an academic credential evaluation to establish his diploma's equivalency to a U.S. baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(A)(B). Furthermore, the record reflects that he received the aforementioned bachelor's degree on March 23, 2014. Even if the Petitioner had provided a credential evaluation indicating that his bachelor's degree from [REDACTED] College is equivalent to a U.S. baccalaureate degree, he has not demonstrated at least five years of progressive post-baccalaureate experience in his specialty at the time he filed the petition.⁴ Accordingly, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently

³ *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Form I-140 was filed on October 15, 2018. With respect to the Petitioner's five years of progressive post-baccalaureate experience in his specialty, he must demonstrate such experience at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he intends to continue to work as a marketing manager. He asserted that his proposed work is aimed at "providing marketing services to the various marketing organizations, business organization, trade and industry, private sector as needed . . . I will also extend my services for independent projects for individuals and independent firms." The Petitioner further stated: "I will engage myself towards marketing strategy and techniques, marketing campaign and will use and introduce digital and social marketing as effective ways of marketing." He also explained that his proposed endeavor involves "project consulting, marketing software, advertising, project management, construction management, dispute resolution, restoration marketing, marketing analysis and skills, and marketing and advertising development."

In addition, the record contains a September 2018 letter from [redacted] offering the Petitioner "the position of Marketing Manager."⁵ The Petitioner also provided a June 2019 letter from his supervisor, [redacted] president of [redacted] indicating that the Petitioner's work involves contributing "to marketing communications by writing press releases for targeted media, helping to set up trade shows, initiat[ing] marketing campaign, and developing the product message and marketing materials to attract customers." [redacted] further stated that the Petitioner utilizes "social media, setting up and monitoring our accounts with Twitter, Facebook, LinkedIn, and various other social media sites." Furthermore, the record includes documentation of various business proposals involving the Petitioner, [redacted], [redacted] and [redacted] (a marketing specialist).⁶

Regarding his future activities, the Petitioner offered a July 2019 letter stating: "Apple is a company I see myself working for in the future. It is the type of company that suited my future goals perfectly. Apple's team has always excelled at manufacturing and marketing products that consumers love. . . . I want to be a part of an innovative company that help[s] improve the lives of their [*sic*] customers."⁷

The record includes a May 2018 *Washington Post* article, entitled "Would you believe U.S. employers are facing a shortage of marketers?" This article discusses a report from the social media site LinkedIn indicating that there is a significant shortage of marketing specialists in the 20 largest metropolitan areas of the United States. The record therefore supports the Director's determination that the Petitioner's proposed work as a marketing manager has substantial merit.

⁵ The Petitioner's job description for this position indicates that he is responsible for the company's marketing plan, marketing budget, communications, business development, client retention, and promotional activities. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ These business proposals do not project future staffing levels or business activity at a level that stands to provide substantial economic benefits in California or the United States.

significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation

⁷ The record does not include documentation of the Petitioner's communications with Apple or the company's interest in hiring him. Nor is there supporting evidence indicating the type of marketing responsibilities he plans to undertake on Apple's behalf.

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director explained that the evidence did not show that the Petitioner's proposed work as a marketing manager for [REDACTED] stands to have broader implications in his field, significant potential to employ U.S. workers, or substantial positive economic effects at a level indicative of national importance.

In his appeal brief, the Petitioner asserts that his work has national importance due to a "shortage of marketing managers in the U.S., especially in . . . small business, digital marketing, and technology." This shortage of marketing professionals in the United States is not sufficient to demonstrate the national importance of any particular marketing work proposed by the Petitioner.⁸ A shortage of qualified professionals alone does not render the work of an individual marketing manager nationally important under the *Dhanasar* precedent decision.

Additionally, the Petitioner discusses past speaking engagements where he "shared his knowledge and the ins and outs of marketing including practical information" with college students in the Philippines.⁹ The Petitioner's claims regarding his participation in invited talks, conferences, and seminars relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also maintains that his proposed work as a marketing manager is beneficial to the U.S. economy and "will continue to create an economic impact." He asserts that his undertaking stands to "accelerate economic development and create new jobs." The Petitioner further contends that his proposed endeavor has an impact on both his current employer and the U.S. economy.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable marketing services for his U.S. employer and future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the

⁸ The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other factors favorable to the Petitioner relates to the balancing analysis set forth under the third prong of the *Dhanasar* framework.

⁹ The record does not include evidence of his communications with any U.S. universities regarding future speaking engagements in this country or their interest in having him share his work.

record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and future clientele to impact the field of marketing or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's marketing projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding degree. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.